

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Chairman;  
Nanci E. Langley, Vice Chairman;  
Mark Acton; and  
Tony Hammond

Competitive Product Prices  
Priority Mail Express & Priority Mail Contract 23  
(MC2016-26)  
Negotiated Service Agreement

Docket No. CP2016-32

ORDER APPROVING AMENDMENT TO  
PRIORITY MAIL EXPRESS & PRIORITY MAIL NEGOTIATED SERVICE AGREEMENT

(Issued December 29, 2016)

I. INTRODUCTION

The Postal Service seeks to amend a Priority Mail Express & Priority Mail negotiated service agreement.<sup>1</sup> For the reasons discussed below, the Commission approves the Amendment.

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<sup>1</sup> Notice of United States Postal Service of Amendment to Priority Mail Express & Priority Mail Contract 23, with Portions Filed Under Seal, December 15, 2016 (Notice). The amendment is an attachment to the Notice (Amendment).

In Order No. 2873, the Commission approved the Priority Mail Express & Priority Mail Contract 23 negotiated service agreement (Existing Agreement).<sup>2</sup> On December 15, 2016, the Postal Service filed notice that it has agreed to the Amendment to the Existing Agreement. On December 16, 2016, the Commission issued a notice reopening this docket to consider the Amendment, appointing a Public Representative, and providing interested persons with an opportunity to comment.<sup>3</sup>

The Postal Service intends for the Amendment to become effective two business days after the date that the Commission completes its review of the Notice. Notice at 1. The Postal Service asserts that the Amendment will not materially affect cost coverage of the existing Agreement. *Id.*

On December 21, 2016, Chairman's Information Request No. 1 was issued, requesting that the Postal Service confirm that the price change was made pursuant to the Existing Agreement's annual adjustment provision.<sup>4</sup> CHIR No. 1 also requested that the Postal Service file supporting financial documentation. CHIR No. 1, question 2. On December 28, 2016, the Postal Service filed a response to CHIR No. 1 to clarify the contractual authority for the Amendment and provide financial workpapers.<sup>5</sup>

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<sup>2</sup> See Docket Nos. MC2016-26 and CP2016-32, Order Adding Priority Mail Express & Priority Mail Contract 23 to the Competitive Product List, December 15, 2015 (Order No. 2873).

<sup>3</sup> See Docket No. MC2017-54, *et al.*, Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, December 16, 2016.

<sup>4</sup> Chairman's Information Request No. 1, December 21, 2016, question 1 (CHIR No. 1).

<sup>5</sup> Responses of the United States Postal Service to Chairman's Information Request No. 1, with Portions Filed Under Seal, December 28, 2016 (Responses to CHIR No. 1). The Postal Service also filed a motion for late acceptance of its responses. Motion of the United States Postal Service for Late Acceptance of Responses to Chairman's Information Request No. 1, December 28, 2016 (Motion). The Motion is granted.

## II. COMMENTS

Comments were filed by the Public Representative.<sup>6</sup> No other person submitted comments. The Public Representative reviewed the Amendment and the Existing Agreement. PR Comments at 2. He states that he was unable to review financial workpapers with regard to the proposed Amendment, because the Postal Service did not file any initially, but that based on the original contract he was able to project the cost coverage under the proposed Amendment. See *id.* Based on that review, he concludes that the Existing Agreement, as amended, should continue to generate sufficient revenue to cover costs and satisfy 39 U.S.C. § 3633(a). *Id.*

## III. COMMISSION ANALYSIS

The Commission has reviewed the Notice, the accompanying materials filed under seal, and the comments filed by the Public Representative.

*Cost considerations.* The Commission reviews competitive product prices to ensure that each product covers its attributable costs, does not cause market dominant products to subsidize competitive products, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3015.5 and 3015.7. As long as the revenue generated by the product exceeds its attributable costs, the product is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, if a product covers its attributable costs, it is likely to comply with 39 U.S.C. § 3633(a).

The Amendment adjusts the Existing Agreement's pricing for contract packages. Notice, Attachment A at 1-4.

Based on a review of the record, the Commission finds that the Existing Agreement, as amended, should continue to cover its attributable costs. 39 U.S.C.

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<sup>6</sup> Public Representative Comments on the United States Postal Service Notice of Amendment to Priority Mail Express and Priority Mail Contract 23, December 27, 2016 (PR Comments).

§ 3633(a)(2). For this reason, it finds that the Existing Agreement, as amended, should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Similarly, it finds the amended agreement is unlikely to prevent competitive products as a whole from contributing an appropriate share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). See *also* 39 C.F.R. § 3015.7(c). Accordingly, a preliminary review of the Amendment indicates it is consistent with section 3633(a). The annual rate adjustment provision in section I.G.1. of the amended agreement should allow the amended agreement's revenues to cover costs for the duration of its term. The Commission will continue to review the cost coverage of the amended agreement in its Annual Compliance Determination to ensure that rates cover costs.

*Other considerations.* The Postal Service states that the Amendment shall become effective two business days after the date that the Commission completes its review of the Notice. Notice at 1. The Existing Agreement, as amended, is set to expire three years after the initial effective date unless, among other things, either party terminates the contract with 30 days' written notice to the other party or it is renewed by mutual agreement.<sup>7</sup>

If the Existing Agreement, as amended, is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission.

In conclusion, the Commission approves the Existing Agreement, as amended.

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<sup>7</sup> Order No. 2873 at 6. Should both parties agree to renew the agreement, any such renewal is required to follow the requirements of 39 U.S.C. § 3633 and the Commission's implementing regulations of 39 C.F.R. part 3015.

#### IV. ORDERING PARAGRAPHS

*It is ordered:*

1. The Commission approves the Priority Mail Express & Priority Mail Contract 23 negotiated service agreement, as amended.
2. The Postal Service shall notify the Commission if the Existing Agreement, as amended, terminates prior to the scheduled expiration date.

By the Commission.

Stacy L. Ruble  
Secretary